



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

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MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: Nancy H. Sutley
Chair

SUBJECT: Emergencies and the National Environmental Policy Act

With this Memorandum, the Council on Environmental Quality (CEQ) reiterates its previous guidance on the National Environmental Policy Act (NEPA) environmental review of proposed emergency response actions.^[1] This memorandum clarifies that the previous guidance remains applicable to current situations and provides guidance on required agency environmental review. Agencies should distribute this guidance to field offices developing and taking actions in response to emergencies along with the agency's relevant guidance on emergency actions and NEPA.

As agencies develop their response to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established in the CEQ Regulations for Implementing the Procedural Provisions of NEPA,^[2] Section 102(2)(c) of NEPA, 42 U.S.C. § 4332,^[3] and agency NEPA implementing procedures and regulations.

Attachment 1 provides the agencies with a step-by-step process for determining the appropriate path forward for the NEPA environmental review of all actions proposed in response to an emergency situation, such as the ongoing Federal response to the oil spill in the Gulf of Mexico.

This memorandum does not establish new requirements. Additionally, CEQ's interpretation of NEPA is entitled to deference.^[4] The CEQ regulations dealing with emergency alternative arrangements, 40 C.F.R. § 1506.11 were established in 1978^[5] and have been successfully applied on several occasions.^[6]

Environmental Impact Statements:

The CEQ regulations, at 40 C.F.R. § 1506.11, provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental impacts and would require an Environmental Impact Statement.

^[1] Memorandum for Federal NEPA Contacts: Emergency Actions and NEPA, 8 September 2005 and attachments, available at http://ceq.hss.doe.gov/ceq_regulations/guidance.html.

^[2] Council on Environmental Quality, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," 40 C.F.R. Parts 1500-1508 (Nov. 1978), available at http://ceq.hss.doe.gov/ceq_regulations/regulations.html.

^[4] *Andrus v. Sierra Club*, 442 U.S.347, 358 (1979).

^[5] 43 FR 55977, Nov. 29, 1978.

^[6] Synopsis of previous alternative arrangements is available at http://ceq.hss.doe.gov/nepa_information/alternative_arrangements.html. See *Valley Citizens for a Safe Environment v. Vest*, 22 E.L.R. 20335 (D.Mass. 1991); *Crosby v. Young*, 512 F.Supp. 1363, 1386 (E.D.Mich. 1981)

“Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.”

Alternative arrangements are limited to “the actions necessary to control the immediate impacts of the emergency.” These alternative arrangements are developed, based on specific facts and circumstances, during the consultation with CEQ. The alternative arrangements developed by the action agency will address the actions necessary to respond immediately, the long-term disaster response and the recovery actions that remain subject to the regular NEPA process.

Alternative arrangements for compliance with NEPA under 40 C.F.R. § 1506.11 can be subject to judicial review. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for NEPA compliance. Alternative arrangements do not complete or alter other environmental requirements; however, engaging other resource and regulatory agencies about other environmental requirements during development and implementation of alternative arrangements can facilitate meeting other compliance requirements.

The factors to address when requesting and crafting alternative arrangements are described below. Once the alternative arrangements are developed, CEQ will provide documentation detailing the alternative arrangements and the considerations on which they are based.^[7]

Environmental Assessments:

When agencies are considering proposals with less than significant impacts or are uncertain about the significance of impacts, the agency can prepare a concise, focused Environmental Assessment. Attachment 2 of this memorandum provides guidance for preparing an EA.^[8] Some agency NEPA implementing procedures provide for alternative arrangements for preparing Environmental Assessments.^[9] Agencies must continue their efforts to notify and inform affected public, state, regional, Federal and tribal representatives of the Federal agency activities and proposed actions. Agencies must comply with the CEQ NEPA regulation requirements for content, interagency coordination and public involvement to the extent practicable.^[10]

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^[7] Synopsis of previous alternative arrangements is available at http://ceq.hss.doe.gov/nepa_information/alternative_arrangements.html.

^[8] Attachment 2 to this Memorandum which refreshes the guidance provided in attachment 2 to the Memorandum for Federal NEPA Contacts: Emergency Actions and NEPA, 8 September 2005 and attachments, available at http://ceq.hss.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf

^[9] See Agency NEPA procedures, for example: <http://edocket.access.gpo.gov/2006/06-3078.htm> (DHS Directive at 6.1); http://www.fs.fed.us/emc/nepa/nepa_procedures/includes/fr_nepa_procedures_2008_07_24.pdf (USFS, 36 CFR 220.4(b)); <http://www.doi.gov/ocpc/nrm.html> (DOI, 43 CFR 46.150).

^[10] 40 C.F.R. §§ 1501.4(b)&(e), 1506.6, 1508.9, and 1508.13 (these regulations address required content and public involvement for preparing Environmental Assessments and Findings of No Significant Impact).